#15 Reply Brief

Our Ref. No.: 4456P001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	
Richard A. Halavais, et al.	Examiner: Christopher L. Gilligan
Application No.: 09/295,577	
Filed: April 22, 1999	Art Unit: 3626
For: INDIVIDUAL SEAT SELECTION TICKETING AND RESERVATION SYSTEM	

Assistant Commissioner for Patents
Washington, D.C. 20231

REPLY BRIEF

Appellants submit, in triplicate, the following Reply Brief pursuant to 37 C.F.R. § 1.193(b) for consideration by the Board of Appeals and Interferences ("Board"). This Reply Brief is responsive to the Examiner's Answer.

ARGUMENT

I. Grouping of Claims

The Examiner suggests, on page 2 of the Examiner's Answer, that all of Appellants' pending claims (Claims 1-6, 11, 16, 17, and 24-34) stand or fall together because Appellants' brief did not include a statement that the grouping of claims does not stand or fall together and reasons in support thereof. However, the Examiner acknowledges that the claims were grouped separately and addresses the distinct arguments for each group separately in the Response to Argument section of the Examiner's Answer (beginning on page 10).

Appellants first note that the claims are separated into distinct groups and that the independent patentability of each group is separately argued in the Argument section of the brief. Appellants also affirmatively state in the brief that the allowability of each group of claims (i.e.,

separately patentable) will be argued in the Argument section (Appellants' brief, page 4, lines 1 and 2). Second, Appellants submit that, if the Examiner concluded that Appellants' brief did not comply with 37 C.F.R. § 1.192(c)(7), Appellants should have been given adequate notice of the noncompliance (37 C.F.R. § 1.192(d)) and an opportunity to correct the brief (MPEP 1206).

In light of Appellants' affirmative statement that the allowability of each group would be argued in the Argument section of the brief and the lack of any notice of noncompliance or an opportunity to correct the brief, Appellants respectfully request that the Board consider each group of claims independently such that Appellants' claims do not stand or fall together on this appeal.

In the event that a corrected brief is necessary, Appellants submit herewith a corrected brief stating that the claims do not stand or fall together. Appellants submit that since the Examiner has already addressed each of Appellants' arguments for each group, acceptance and entry of the corrected brief by the Examiner would not cause any detriment to the Examiner's ability to contend the points in Appellants' brief.

II. "Response to Argument" Section of Examiner's Answer

A. Examiner's Response to Argument (A)

In response to Appellants' argument that Huegel does not disclose allowing a user to select a seat of choice, the Examiner states in the Examiner's Answer (pages 11 and 12) that Huegel allows a user to select a preferred seating area for a selected event on a selected date (emphasis added). From this the Examiner concludes that Huegel renders Claim 1 obvious since Claim 1 recites providing a user with the capability of selecting one of a time, space, and seat of choice. The Examiner emphasizes that Claim 1 recites one of a time, space, and seat of choice, stating that Huegel needs only to teach one of these criterion. In response, Appellants submit that Huegel fails to teach or suggest any of the three criterion.

Appellants first note that, as disclosed in Appellants' specification, selection of a "time of choice," as recited in Claim 1, refers not to the time of the selected event but rather to a specific time for an appointment (e.g., with a dentist, doctor, or mechanic). This feature of the selection of a time

of choice is disclosed in Appellants' specification in the "Background--Field of the Invention" section beginning on page 1. Appellants submit that Huegel does not teach or suggest at least this limitation of Claim 1. Moreover, the Examiner has made no evidentiary showing that this limitation is obvious over the cited art of record.

Appellants note that, as disclosed in Appellants' specification, selection of a "space of choice," as recited in Claim 1, refers not to a seating area of a selected event but rather to a space that generally requires a reservation (e.g., stateroom on a cruise ship). This feature of the selection of a space of choice is disclosed in Appellants' specification at page 10, lines 14-17. Appellants submit that Huegel does not teach or suggest at least this limitation of Claim 1. Moreover, the Examiner has made no evidentiary showing that this limitation is obvious over the cited art of record. In this regard, Appellants note that if Huegel were used to make reservations for staterooms on a cruise ship, a user would most likely get to choose what class of stateroom they preferred, and the system would return a "best available" stateroom, which the user could then accept or deny. However, being given the opportunity to accept or decline a space chosen by the system is not the same as selecting a space of choice, as recited in Claim 1. Thus, Huegel fails to teach or suggest at least this limitation.

Appellants submit that the selection of a "seat of choice" is not taught or suggested by Huegel. Rather, Huegel merely discloses the selection of "best available" seats, chosen on the user's behalf, within a seating area based on user preferences. Thus, the user's only option is to accept or decline the "best available" seats chosen by the system. Similar to the "space of choice," the user has no option to select the seat of choice, as recited in Claim 1.

In light of the foregoing, Appellants submit that Huegel fails to teach or suggest all of the limitations of Claim 1. Therefore, the rejection as to Group I should be overturned.

Regarding Claims 24 and 30 (Groups II and VII, respectively), the Examiner states that Appellants give the claim language an interpretation that is too narrow. Specifically, the Examiner suggests that Appellants interpret "selecting a specific preference from a plurality of specific

availability options" to mean "choosing a specific seat from the available seats." In response, Appellants agree that such an interpretation is indeed too narrow.

Rather, Claims 24 and 30 both recite a "specific indication of client preference" (emphasis added). This limitation clearly states that the client indicates a specific preference, which is neither taught nor suggested by Huegel. Rather, Huegel is limited to allowing a user to indicate general preferences (e.g., event, date of event, time of event, and general seating section). With this general user information, the system of Huegel generates the "best available" seats on a user's behalf, which the user can accept (even if the user specifically preferred different seats in the same seating area) or decline (which leaves the user with no seats for the desired event). Thus, the user must either settle for the seats chosen by the system of Huegel or forego the event completely.

Appellants submit that a "take or leave it" system as that disclosed in Huegel cannot be reasonably relied upon to teach or suggest a specific indication of client preference, as recited in Claims 24 and 30, which can be interpreted, among others, to mean specific seats in an arena, a specific stateroom on a cruise ship, or a specific time slot for an appointment. Therefore, at least this limitation of Claims 24 and 30 is not taught or suggested by Huegel.

Accordingly, Appellants respectfully request that the rejection of the claims of Groups II and VII be overturned.

B. Examiner's Response to Argument (B)

In response to Appellants' argument that Huegel does not disclose a client node unaffiliated with a server, the Examiner states in the Examiner's Answer (pages 12 and 13) that the Official Notice relied upon is used to suggest that it would have been obvious to embody the system of Huegel in an environment where the client node is located remote from the server node. The Examiner bases this conclusion on the assumption that the term "unaffiliated" is synonymous with "remote from." Appellants disagree with the Examiner's interpretation of "unaffiliated."

Appellants first reiterate that the Examiner admitted that the self-service terminal of Huegel is not "a client node unaffiliated with the server" but then took Official Notice that it is well-known

to provide the same services of a self-service terminal on an unaffiliated computer connected to a network (Office Action dated January 12, 2001, page 4). In response, Appellants challenged the Official Notice (Response to Office Action dated April 11, 2001, pages 3 and 4), noting that the Examiner's assertions were not sufficient to carry the burden imposed by law (e.g., make a prima facie case of obviousness). Specifically, Appellants stated that the problems and requirements where no dedicated hardware or software exists on the client end are very different from the environment of Huegel, in which the entire client is dedicated. The Examiner's next reply did not challenge the fact that the issue of affiliation turned on whether the self-service terminal was dedicated (Office Action dated October 4, 2001, pages 3 and 4). Rather, the Examiner accepted Appellants' arguments related to dedication (e.g., affiliation) as not false and reiterated the previous analogy given in connection with the Official Notice. However, the Examiner failed to provide any evidence, as requested by Appellants, that such an example would have been obvious to one of skill in the art at the time the invention was made (emphasis added), as required by 35 U.S.C. § 103(a).

As further evidence that "remote from" and "unaffiliated" are not synonymous, Appellants note that Claim 24 recites that the client node is both "remote from" and "unaffiliated with" a server. Thus, the two phrases must refer to distinct notions, or the claim would be redundant.

In light of the foregoing, Appellants submit that the claim language "unaffiliated" is not synonymous with "remote from," as argued in the Examiner's Answer. Therefore, Appellants respectfully submit that proper evidence has not been submitted to render obvious a client node unaffiliated with a server. Accordingly, Appellants respectfully request that the rejection of the claims of Groups I, II, and VII be overturned.

C. Examiner's Response to Argument (C)

In response to Appellants' argument that Huegel and Merrill in combination do not disclose transmission of an image to a client, the Examiner states in the Examiner's Answer (pages 13 and 14) that in order for an image to be displayed on a client node, the image must be transmitted from

wherever the image is stored. The Examiner relies on Merrill (Col. 10, lines 11-25, referred to incorrectly as Miller on page 13 of Examiner's Answer) to show such a transmission. However, the passage of Merrill referenced by the Examiner does not teach or suggest transmission of an image to a client (emphasis added), as recited in Claim 25 (Group III). Rather, the referenced passage of Merrill discusses the retrieval of an image from a database located within the client.

The Examiner further states that Appellants analyze Merrill by itself without reference to Huegel. On the contrary, Appellants' analysis was directed at Huegel and Merrill in combination, with an eye towards the ability of Merrill to cure the deficiencies of Huegel (Appeal Brief, page 10, lines 3-11).

In light of the foregoing, Appellants submit that at least this limitation is neither taught nor suggested by the cited reference in combination. Accordingly, Appellants respectfully request that the rejection of the claim of Group III be overturned.

D. Examiner's Response to Argument (D)

In response to Appellants' argument that Huegel does not teach or suggest a graphical representation showing available seats in a first representation and previously sold seats in a second representation, the Examiner states in the Examiner's Answer (page 14) that Huegel does show available seats in a first manner and reserved seats in a second manner (Col. 8, lines 56-65). In response, Appellants note that Huegel merely indicates where the "best available" seats (e.g., chosen by the system) are located relative to all other seats. There is no indication in Huegel of whether the other seats in the display are available or previously sold, which is not the same as showing available seats in a first representation and previously sold seats in a second representation, as recited in Claims 26 and 31 (Groups IV and VIII). Thus, at least this limitation is neither taught nor suggested by Huegel.

Accordingly, Appellants respectfully request that the rejection of the claims of Groups IV and VIII be overturned.

E. Examiner's Response to Argument (E)

In response to Appellants' argument that Huegel does not teach or suggest that the indication of specific availability is transmitted as one of a hypertext markup language ("HTML") page and a java applet, the Examiner states in the Examiner's Answer (pages 14 and 15) that the Examiner took Official Notice of that this feature was old and well known at the time of the invention (Office Action dated January 12, 2001, pages 7 and 8). The Examiner further states that, due to the lack of traverse by Appellants, that the Official Notice constitutes an admission, upon which the Examiner bases the current rejection

In response, Appellants first note that the Examiner did not take Official Notice of the limitation recited in Claim 27. Rather, the Examiner took Official Notice that "it is well known to transfer and present data to an end user using a hypertext markup language page and a JAVA applet" (emphasis added). Appellants agree that transfer and presentation of static HTML pages antedates this application. Thus, traversal of that which the Examiner took notice of was neither apposite nor necessary. However, Appellants submit that transmission of the specific availability, as recited in Claim 24, as one of a hypertext markup language page and a java applet is not taught or suggested by Huegel in combination with the Official Notice set forth in the January 2001 Office Action. The specific availability is, by its nature, dynamic and changing in real time as, for example, seats are sold to a multitude of distributed users. Neither Huegel nor the Official Notice address the inherent quality of dynamically changing specific availability data nor does either reference teach or suggest how this quality would be appropriately addressed to provide the specific availability information as either an HTML page or a Java applet. Thus, at least this limitation is neither taught nor suggested by Huegel, even when taken in combination with the Official Notice discussed above.

Accordingly, Appellants respectfully request that the rejection of the claim of Group V be overturned.

F. Examiner's Response to Argument (F)

In response to Appellants' argument that Huegel does not teach or suggest accepting payment information at the server sufficient to permit access to the specific client preference, the Examiner acknowledges in the Examiner's Answer (page 15) that credit card transactions in Huegel are conducted through a credit card payment authority. However, the Examiner states that the server of Huegel receives payment information sufficient to permit access to the specific client preference. As an example of such payment information, the Examiner states that when a user specifies the event, the date of the event, and the location, the network server is provided with information that indicates the number of seats at a given price that the user wishes to purchase.

In response, Appellants first note that the plain language of Claim 29 recites, among others, that the payment information received at the server is sufficient to permit access to the specific client preference (emphasis added). Huegel fails to meet this limitation in that the only payment information received by the server of Huegel is the price, which, without more, is not sufficient to permit access to the specific client preference, as recited in Claim 29. Thus, at least this limitation is neither taught nor suggested by Huegel.

Accordingly, Appellants respectfully request that the rejection of the claim of Group VI be overturned.

CONCLUSION

For the reasons specified above, the rejection of all claims should be overturned and the claims allowed.

Respectfully submitted,

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CERTIFICATE OF MAILING:

I hereby certify that this correspondence is being deposited as First Class Mail with the United States Postal Service in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on November 12, 2002.

Lillian E. Rodriguez 11-12-02

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